



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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December 13, 2002

VIA FACSIMILE NO. 801/625-5127 AND CERTIFIED MAIL

Mr. Jack Troyer, Regional Forester
Intermountain Region
United States Forest Service Federal Building
324 - 25th Street
Ogden, UT 84401

RE: Link Canyon Breakout Amendment to SUFCO Mine Plan/ Amended Record of Decision (ROD) for Pines Tract Project, FEIS 1999 (C042/002)

Dear Mr. Troyer:

This letter is to express my deep concerns about a matter that is coming before you for review under the Standing Appeals Review Team (SART). This matter is the proposed Link Canyon Breakout, Pines Tract Amended Record of Decision (ROD). The concerns with this project encompass two very fundamental issues.

The first concern is that the amended ROD for the Pines Tract appears to the Division of Oil, Gas and Mining to have been an unnecessary action. It is stated clearly in the amended ROD of October 9, 2002, p. 3, last paragraph, under "A. Scoping," that *"The issues are adequately addressed in the Pines EIS; however, there are some differences because the current proposal is to reopen one of the two existing collapsed portals rather than to construct a complete new portal facilities site at this location, as evaluated in the EIS."* Thus, because a lesser impact is proposed, at .25 acres of disturbance versus a potential 100-150 acres of disturbance, a revised ROD appears quite unnecessary and superfluous. It is this unnecessary ROD amendment that has precipitated the coming hearing before the SART. Withdrawal of the amended ROD by the Manti-LaSal National Forest might moot the need for this hearing, or the need for future litigation.

Second, under the Cooperative Agreement, between the Secretary of the Interior and the Governor of Utah, concerning the regulation of Coal Mining on Federal Lands, at CFR 944, **Article VI, Review of Permit Application Package**, amendments to mine plans, at most, only call for consultation, but clearly not "consent." As well, at 30 CFR 740 **General Requirements for Surface Coal Mining and Reclamation Operations on**

✓ Acc. Mary Ann WRIGHT
State acc'd

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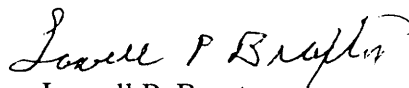
Federal Lands, only consultation is called for and consent, as necessary. In this case, the United States Forest Service (USFS) has only a consult role. Such consultation requires only that *"the regulatory authority [this division] shall consider the comments of the Federal land management agency and include these comments in the record of permit decisions."* Further, for permit revisions (and, recall that this is an amendment – a lesser permit change than a revision), it is clear that only a consulting role is established. Thus, while the discretion to amend the ROD is clearly Manti-LaSal National Forest's, the USFS did not have jurisdiction over the action that the FS believes precipitated the need to amend the ROD.

At this time, I am therefore requesting a vacation or withdrawal of the decision to amend the ROD, as the impacts predicted by the action at Link Canyon are clearly a fraction of those contemplated in the EIS.

The division is continuing to process the Link Canyon Breakout amendment to the mine plan, which has included a 45-day period for the USFS to furnish us their comments. (See 30 CFR Article VI.B. (2)). We have received the amended ROD, dated October 9, 2002, which has selected alternative 2 and this is sufficient to proceed with our permitting action.

Please contact me at 801-538-5370 if I can be of assistance in sorting out issues for this or future coal permitting actions. Thank you for the opportunity to provide information that I trust may be helpful to you and the SART.

Sincerely,



Lowell P. Braxton
Director

LPB

cc: Sally Wisely
Elaine Zieroth
Tom Faddies

LinkCanyon12-13-02